



Conjugal Visits in Prisons Discourse: Is it Even an Offender Rehabilitation Option in Africa?

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ABSTRACT

Conjugal rights issue in prisons is indeed an old debate. This article reviewed the literature on the genesis of prisoners' conjugal visits programme, its global prevalence and the scholarly debate for and against its provision to understand if it can be a rehabilitation option in African countries' prisons. It has been noted that conjugal visits were haphazardly started in the 1900s in Mississippi before becoming official programmes in 1989. Though they were discontinued later in 2014 in Mississippi, conjugal visits are still provided in many penitentiary facilities in America, Europe, Asia and Africa. Studies have revealed that conjugal visits are capable of reducing the problems of homosexuality, sexual assaults and physical violence in prisons. It has also been observed that, apart from the fact that denial of conjugal rights to the prisoners' spouse could be a form of punishment to innocent victims, conjugal visits can be incentives for good prisoners' behaviour and rehabilitation in prisons. However, apart from the fact the programme is likely to be expensive and costly to African countries whom their general strife is prisoners' overcrowding, most of the arguments against conjugal visits are moral-based such as that the programme is likely to perpetrate one-parent family system and is prone to abuse by both prisoners and prison staff. It has, therefore, been concluded that it cannot hurt anybody if legally married prisoners and their spouses are provided with a right to enjoy conjugal visits especially in those jurisdictions which have embraced rehabilitation philosophy.

Keywords: conjugal visits, conjugal rights, African prisons, rehabilitation, prisoners' rights

1 Introduction

Conjugal rights issue in prisons has remained an old debate which has resurged in the 2000s in many African countries (e.g. BBC News, 2000; Lusaka Times, 2018; Majaliwa, 2012; Mbewe, 2016; Tapfumaneyi, 2019). Some people consider conjugal visits programme as a privilege to offenders, while others construe it as an extension of the basic human rights, which are inherently fundamental and sacrosanct (Singh & Dasgupta, 2015). This review explores the definition and meaning of conjugal visits, its genesis and prevalence in different countries as well as a scholarly debate on merits and demerits of the provision of conjugal rights in prisons. Based on the literal discourse, the article further discusses the possibility of conjugal visits being a rehabilitation option in African prisons, specifically Malawi.

1.1 Conjugal rights and visitation in prisons

In its general sense, the term 'conjugal' refers to the rights or privileges of a couple to associate and build a home together and enjoy all married couples' privileges. Wyatt (2006) defined the term as referring to the rights that are the recognized inherent rights of married couples in society (p. 598), which include the right to companionship, building a family together, and enjoy some of the benefits of an intimate relationship (Hensley et al., 2002). In other words, these are rights to have sex and to procreate bestowed on married couples in society (Goyal, 2018). In some countries, conjugal rights are offered to prisoners in prisons during conjugal visits. Conjugal visits in prisons are, therefore, scheduled private meetings between



incarcerated persons and their significant others, usually their legal spouses during which the couple may engage in whatever legal activity they desire including sex (Thompson & Loper, 2006; Einat & Rabinovitz, 2012). During this scheduled period, an inmate is allowed to spend several intimate hours or days with their visitor.

1.2 The genesis of conjugal visitations - Mississippi State Penitentiary

Mississippi State Penitentiary in Parchman was the first prison to allow conjugal visits in the world. Hopper (1962) traced the genesis of conjugal visitations at this prison facility as early as 1900. According to Hopper (1969), the conjugal visitation programme started as an initiative in an uncivilized and shameful way without proper planning. During those years, Parchman Penitentiary was a cotton plantation in which the majority of prisoners were black who worked in the prison's cotton fields. Conjugal visits were only accessed by black inmates in the beginning. Hensley et al. (2002) observe that the prison authorities believed that black inmates had superhuman strength and an insatiable sexual appetite that was likely to translate into violence even against prison officials if not sufficiently controlled, hence conjugal visits was used as an attempt of meeting their physical and emotional needs. Apart from that, Hopper (1989) reports that the programme was also provided as an incentive to inmates since the Parchman facility was a plantation that was run as a commercial entity for profits. Instead of paying them money for their labour, inmates were allowed unusual privileges such as conjugal visits.

During those days, Parchman prisons did not have facilities for conjugal visits. Hopper (1989) reported that some prisoners took their wives or girlfriends into their prison cells and created their privacy by covering blankets over their beds, while others used storage rooms or tool-sheds within prison vicinity to enjoy their conjugal visits. The visits were allowed only on Sundays, prostitutes' services were also used during those visits in the 1930s (Hopper, 1969). It was around 1940 that some progress towards respectability of the programme was registered. The inmates built their own visiting buildings within the prison vicinity out of scrap lumber and gave them the name "red houses" since they were painted red, the readily available paint colour. It was in the 1940s that the programme was opened for access to all incarcerated persons regardless of race.

Apart from conjugal visits, prisoners at Parchman's prisons also enjoyed ten-day furloughs as addition privilege as compared to other prisons in America as motivation and incentives for their hard work. These were temporary leaves allotted to some inmates in Decembers and Januarys when there was less work needed on the farms (Hopper, 1989). However, furloughs were most often granted to prisoners who had achieved the status of the trusty, loosely a synonym of the term "*nyapala*" in Malawi prisons (Burton et al., 2005, p. 37). Trustees were important to the system since they guarded other inmates and did all of the specialized maintenance and skilled work which kept the institution going, hence such functionally important individuals had to be afforded special consideration. Therefore, for the rest of the inmates, their only motivation was conjugal visits.

It is noted that even prison officials had a negative attitude towards the conjugal visiting programme in the early years and knew that it was considered a radical practice elsewhere, but they still allowed it without thinking much (Hopper, 1989). However, the prison authorities gradually began to change their indifferent attitude toward the conjugal practice after realizing that many people perceived the practice as progressive (Hopper, 1989). This made them start having thoughts of improving the facilities. It was in 1965 when those thoughts bore fruits when the construction of the First Offender's Unit included red houses which signified official recognition of the conjugal visiting programmes. It, therefore, followed that all new units which were constructed since then had routinely included conjugal visiting quarters. Following this official sanction, instead of just tolerating conjugal visiting, the prison staff began to support it.

It was the Federal court order (*Gates v. Collier*) in January of 1971 that stroke the final nail since it ordered a lot of changes at Parchman prison facilities amongst them a general revamping of outdated inmate housing which also included the renovation of old 'red houses'. In 1972, conjugal visits programme was also introduced for women inmates. By 1989, conjugal visitation became an official programme administered

by an officer titled “Director of Family Counseling” at Parchman prison facilities (Hopper, 1989, p. 105). The programme was now an incentive for good conduct since to earn conjugal visits, all incoming inmates needed to work their way through the behaviour modification programmes to qualify for conjugal visitations. For an inmate to qualify, they needed to provide a legal certificate of marriage, as well as a record that they have not violated the prison rules in a period of six months and do not have sexually transmitted infections (Einat, 2017). These rules contributed to the decency of the programme. The restrictions also made the number of inmates participating in the programme to be extremely reduced hence making the programme manageable. According to McElreath et al. (2016), by 2014, out of more than 22,000 inmates confined in the Mississippi prisons and jails, only 155 were annually allowed conjugal visits. Conjugal visitation progressed for nearly a century without obstructions at Mississippi. In 2002, Hensley et al. (2002) report that conjugal visits still took place every fortnight and lasted up to 3 days in spacious, well-equipped cottages on prison premises, but Einat (2017) documents that they only lasted one hour.

In the modern USA, the United States Federal Bureau of Prisons does not have laws that either allow or prohibit prisoners’ conjugal visits (Yakubu, 2018). It is the particular state laws that legalise conjugal visits in their jurisdictions. After Mississippi, the State of California followed in 1968 by introducing conjugal visits in 32 institutions (California Department of Corrections, 2003). Conjugal visits were later introduced in at least six other states, namely; New Mexico, Connecticut, Minnesota, New York, Washington, South Carolina and Alabama (Carlson & Cervera, 1991; Hopper, 1989; New Mexico Department of Corrections, 2006; Singh & Dasgupta, 2015; Washington Department of Corrections, 2005; Wyatt, 2006). For example, offenders in Californian prisons were allowed to have these visits in prisons’ modular homes (Wyatt, 2006). Nevertheless, the conjugal visits in New Mexico and Mississippi were discontinued in 2014 apparently for economic reasons, though the change of prison philosophy from rehabilitation to punishment has been cited to be the main cause (McElreath et al., 2016; Reuters, 2014). McElreath et al. (2016) described this as retrogressive in the state of Mississippi’s efforts in reducing recidivism and physical and sexual violence in prisons hence warned the Mississippi authorities to start preparing for a rise in both.

1.3 Conjugal Visitations in other Jurisdictions

Apart from the United State of America, several countries have prisoners’ conjugal visits programmes. In Europe, the European Convention on Human Rights provides that an adult prisoner has the right to marry and have a family (Goyal, 2018). Many states, therefore, allow prisoners’ conjugal visits. For instance, conjugal visits are allowed in Spain, France, Sweden and Denmark (Wyatt, 2006; Smit & Dunker, 2001), as well as in Switzerland, Germany and Greece (Cavan & Zemans, 1958; Singh & Dasgupta, 2015). In Spain, prisoners are given access to conjugal visits once per month, while these visits are accessed by inmates in Brazilian prison once per week, but maybe withdrawn as a disciplinary measure in both jurisdictions (Smit & Dunker, 2001; Wyatt, 2006). However, in the United Kingdom, prisons in England, Wales, Scotland and Northern Ireland do not allow conjugal visits but only grant them home visits (Yakubu, 2018). These home visits are only granted to long term, low absconding risk prisoners who have a few weeks or months remaining before release.

Many Latin American countries such as Chile, Puerto Rico, Argentina, and Mexico started providing spouses’ supervised visits with the prisoners in 1950s (Cavan & Zemans, 1958). In Chile, prisoners are even allowed to visits their homes apart from enjoying conjugal visits within the facilities (Singh & Dasgupta, 2015). Conjugal visits are also provided in Russia (Whittell, 2006 in Singh & Dasgupta, 2015), Israel (Ben Avraham, 2012), Canada, Brazil, Philippines, Israel, Turkey and Belgium, (Wyatt, 2006; Einat & Rabinovitz, 2012; IPS, 2012). In Russia and Canada, these visits are called onsite family visits and are provided once per month (Singh & Dasgupta, 2015). In Israel, conjugal visits are granted only to officially wedded couples provided that the spouse has visited the inmate at least three consecutive times in the preceding 2 years to enable them to fulfil the Judaism commandment of procreation (Ben Avraham, 2012). This also makes eligibility difficult since less than 15% of inmates are usually eligible for conjugal visits (IPS, 2012).

2 Arguments in Favour of and against Conjugal Visits

2.1 In favour of prisoners' conjugal visits

Arguments in favour of conjugal visits in prisons have generally been based on benefits that the programme provides to the inmates, spouses as well as the prison facilities. To begin with, many scholars have argued that conjugal visits are capable of reducing the problems of homosexuality in prisons. Homosexuality is one of the biggest problems faced in prison systems especially in countries where the act is outlawed. Homosexuality tension can be greatly mitigated if more opportunities for intimate relationship are available to prisoners (Goyal, 2018; Hensley et al., 2000; Singh & Dasgupta, 2015). For example, Hopper (1962), the early researcher on conjugal visits in prisons observed that these visits had a big role in reducing homosexuality in the Mississippi State Penitentiary. The latter study was done by Hensley et al. (2000) at the same Mississippi state prisons in Parchman and Pearl revealed that 74% of the respondents who participated and 59% of those who did not participate in the conjugal visits respectively perceived that the programme reduces the frequency of homosexual relationships in prison.

Secondly, conjugal visits are capable of reducing the incidences of sexual assaults and rape in prisons. Several studies done in some states in the USA such as Tennessee and New York found that many prison officials believed that conjugal visits alleviate male rapes among inmates in prisons (Carlson & Cervera, 1991; Knowles, 1999; Mustin (1980; Nacci & Kane, 1983; Robertson, 2003). Einat & Rabinovitz (2012) argue that the sad and most troubling part of prison homosexuality is when it is non-consensual, which is a serious issue in prison facilities. Conjugal visits can, therefore, help in reducing and preventing the incidences of male rape in prisons.

Thirdly, some scholars observe that conjugal visits reduce physical violence in prisons (Goyal, 2018; Hensley et al., 2000; 2002). Goyal (2018) argues that the negative effect of unisex prison environment can also be reduced when inmates spend a significant amount of time with their families since intimate contact help them to reaffirm their masculinity and reduce their need to establish a manly self-image by victimizing other inmates. This was also found in both 2000 and 2002 studies conducted by Hensley et al. at the Mississippi state prisons in Parchman and Pearl. The majority of respondents felt that the programme reduced tension or physical violence inside the prison particularly in male prisons hence can help in reducing prison riots.

Another point in favour of conjugal visits in prisons is that it can be used as a tool for reforming the behaviour of inmates in prisons (Goyal, 2018). By establishing ties with the family, there is a normalizing effect which is capable of reducing the incidences of violence in prisons and also prepares the prisoner for re-entering the society once they are released (Goetting, 1982). In a study done by Howser et al. (1983), it was found that male inmates who participated in family-reunion programmes in New York, which included conjugal visits, improved their behaviour compared with those who did not. Clemmer (1950) also discovered in his study that prisoners who maintain ties with law-abiding members of the society while in prison especially spouses have a much better chance for rehabilitation than prisoners who do not maintain such ties. The behaviour change effect is beneficial to prison authorities as well since it renders the prison easy to manage (Singh & Dasgupta, 2015). Conjugal visiting privileges would, therefore, be an incentive factor that might improve prison discipline apart from just inmates' rehabilitation.

Furthermore, some scholars argue that society overlooks the issue of the conjugal visit from the standpoint of the rights of the prisoner's spouse. The prisoner is the one who has committed an offence and not their spouses. Therefore, the denial of conjugal rights to the offenders' spouse could be a form of punishment to an innocent victim (Schneller, 1976). Goyal (2018) observes that the act of denying conjugal visits to a spouse who wants them should be considered as a denial of that person's civil and human rights. Schneller (1976) bemoans that it was unfortunate that this social rejection of the inmates' families is not considered an issue since it is usually viewed as nothing but the collateral damage of incarceration. But there is always indeed collateral impact on spouses and families. Having a spouse in prison can result in loss of income, relationship problems and additional burdens relating to child care (Durrant, 2013). However, allowing

conjugal visits to the prisoner's spouse can be the first step to lessen the pains of imprisonment on their families.

2.2 Against prisoners' conjugal visits

Some scholars have argued against the provision of conjugal visits in prisons. The first one is that conjugal visitations are likely to perpetuate the one-parent family system. Goyal (2018) opines that allowing conjugal visits would mean encouraging more babies to be born in one-parent families, and the worst scenario is when both spouses are in prison. Single parenthood on its own right has been found wanting especially when one of the parents is incarcerated. Burton et al. (2005) argue that children from single-parent homes are often considered to be at a high risk of turning to crime since they are more likely to lack a suitable role-model than those from two-parent homes. Furthermore, parental imprisonment brings about many psychological problems in children including depression, aggressive behaviour, sleep problems and delinquency (Murray et al., 2009). Using this point of view, this can be easily avoided if the spouses just wait for the release of their imprisoned partners to enjoy their conjugal rights. Nevertheless, the provision of contraceptives such as condoms can mitigate this problem.

Secondly, conjugal visits are costly and expensive. Singh and Dasgupta (2015) observe that the process of reviewing the prison laws to create room for prisoners to be awarded the right of conjugal visits is an arduous task, especially in developing countries. Furthermore, there would be a need to construct rooms for such visits amidst other problems that equally need money such as overcrowding (Goyal, 2018). In Uganda, the parliament rejected the law review that included introducing conjugal visits in prisons because the country was already struggling with prisons overcrowding and lack of basic needs problems (Yakubu, 2018). Hurrying the idea without proper housing might replay the earlier days' conjugal visits in Mississippi. Sex ought to be a private matter which must take place in privacy. Nonetheless, room constructions are once-off investments worth the expected future returns such as prisoners' rehabilitation and reduced violence.

Another strong objection to legalisation of conjugal visits programmes is that their administration is prone to be abused by both prisoners and prison staff. Singh and Dasgupta (2015) argue that with conjugal visits programme prisons may turn into prostitution brothels at government expense. Since in most developing countries prison officers are underpaid, the possibility of corruption creeping in cannot be ignored. According to these authors, "the underpaid jail staff may fall prey to offers of setting up prostitutes for jail inmates while others may even prostitute their own family members to earn favours from fellow inmates" (Singh & Dasgupta, 2015, p. 87). A similar thing happened in South Africa where conjugal visits are not yet allowed. A former Pollsomoor prisoner reported that a prison officer arranged for him two conjugal visits with his fiancée when he was in prison in exchange for bribes (Singh & Dasgupta, 2015). If this was able to take place without conjugal visits legal framework, it is likely to be worse if conjugal visits were allowed by laws. This just points to the fact that if the programme is to be rolled out, it could need seriousness on the part of every officer in the service lest it becomes chaotic.

3 Prisoners' Conjugal Visits Issue in African Countries

In many African countries, the issue of providing conjugal visits to prison inmates has always been hanging in the air with minimal or no success to implementation generally due to lack of resources. Shamel (2004) reported that Egypt allowed prisoners to have access to 12 to 24 hours of conjugal visits within the prisons to reduce sexual and nonsexual violence. This privilege was revoked upon violation of any prison rules (Wyatt, 2006). In Tanzania, the government announced plans to grant conjugal rights to prisoners in 2012 in an effort of reducing sexual abuse amongst inmates that was rampant then in Tanzanian prisons (Majaliwa, 2012). The programme, which was eventually introduced, was short-lived in Tanzania since the new President of the country directed an end to it in 2018 (Presse, 2018; Rweyemamu, 2018).

In Zimbabwe, the discourse on the possibility of introducing prisoners' conjugal visits started way back in 1998 (BBC News, 2000). This was when HIV and AIDS issue was emerging as a global pandemic to curb

its spread in prisons. In 2019, inmates only enjoyed Family Week in which they would spend several hours with their relatives or spouses. However, conjugal rights were not exercised during those extended visits (Tapfumaneyi, 2019). In Kenya, the Home Affairs Minister announced Kenya's plans to introduce conjugal visits in 2003 to rehabilitate prison inmates as well as reduce prison homosexuality and HIV spread. This was even acknowledged by Einat (2017). Wyatt (2006) adds that the Minister directed prisons to make available suitable facilities within prison premises in readiness for this programme. However, conjugal visits introduction plans in Kenyan prisons were still in limbo in 2019 (Mwangi, 2019).

In Zambia, reports also indicate that the country has been pondering on the idea of introducing conjugal visits in its prison facilities (Lusaka Times, 2018; Mbewe, 2016; Sichone, 2019). In 2016, it was reported that the then Commissioner General of Zambia Correctional Services indicated that government would consider introducing prisoners' conjugal visitation rights once the Prisons Act was reviewed since it was good practice (Mbewe, 2016). However, it is clear that the new prison act did not include this programme since in 2018 some activists such as Prison Care and Counselling Association were still advocating for further review of prison laws to allow prisoners' conjugal rights (Lusaka Times, 2018). Nevertheless, the Commissioner-General of Zambia Correctional Service was still cited in 2019 saying that plans were underway to introduce conjugal visits for inmates in the country's correctional facilities with the first step of piloting the conjugal rights programme in correctional facilities with good structures (Sichone, 2019).

This same trend has also been reported in eSwatini, South Africa and Ethiopia (Dubu, 2016; Chabana, 2017; Phakathi, 2012). In South Africa, activists have in recent years called for the development of policies or laws that will provide and regulate conjugal visits to prisoners even though it might be an expensive endeavour (Chabana, 2017; Shayi, 2008). This was advocated after noting numerous corruption incidences linked to the provision of sex opportunities to prisoners in some country's prisons. Shayi (2008) argues that the South African policy of "no sex in prison" was unfairly discriminating heterosexuals in prisons, since homosexual inmates were having sex in prison with their partners. In fact, it looked like the authorities were encouraging homosexuality since condoms were officially made available in prisons for this practice. The author, therefore, recommended that the government needed to either legalize conjugal visits or ensure that homosexuals are not put together in the same cell to ensure equal treatment of inmates.

In eSwatini, it was reported that the authorities were planning to introduce conjugal visits in prisons. Phakathi (2012) reported that Swaziland was to be the first African country and only 16th country worldwide to introduce conjugal visits for inmates in 2012. This was because the correctional service had plans of constructing two-bedroomed houses at every prison facility in the country for the well-behaving eligible inmates to enjoy their conjugal rights. Some activists objected the idea, calling the policy as misguided. Phakathi (2012) reports his interview with a critic who was an ex-prisoner in one of the prisons in the country. According to him, conjugal visits would create animosity and prison wars between eligible married inmates and ineligible unmarried ones because they would feel discriminated. Another critic observed that the eSwatini Correctional Services had its priorities wrong since the contemporary issues that needed attention then was the passing of the Correctional Services Bill 2011 to address the issue of rehabilitating offenders more comprehensively. Rather than wasting funds on conjugal enjoyment of prison inmates, the government needed to put its efforts on finalising this piece of legislation. Phakathi (2012) quoted one of these critics saying "I think we should be concentrating on preventing people from going to prison rather than creating a comfortable home for them within the correctional facilities". However, the Commissioner of Correctional Services backed the policy as non-discriminatory since the married couples have a moral right that singles do not have of enjoying intimate relationships with their spouses. On the justification of the project, the Commissioner argued that the cost of constructing these two-bedroomed houses would only be a third of the actual cost because prison officers and inmates will do the construction. Moreover, many activists who supported the policy argued that granting conjugal visits to married inmates will help in maintaining family ties and preventing marriages from breaking up, a thing that is pivotal for the successful reintegration of an offender when they are released.

4 Malawi Legal Framework *vis-à-vis* Rights of Prisoners

Malawi is amongst the countries in Africa which are putting considerable efforts in domesticating key international conventions on human rights in her laws. In 1993, Malawi announced her accession of the International Covenant on Civil and Political Rights [ICCPR] (University of Minnesota, 2018). This was viewed as a very important step for the country to customise international standards into the constitution. In 1994, the Constitution of the Republic of Malawi was drafted which included almost all the provisions of the ICCPR. This was followed by the accession of Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment in 1996 (University of Minnesota, 2018). The country has also shown a commitment to the UN standard minimum rules for the treatment of prisoners, of which their revised version is also known as the Mandela Rules (UNODC, 2015).

These standard rules do not oblige the member states to provide conjugal rights to prison inmates. Rule 58 only obliges the prison regimes to allow prisoners to have contacts and communication with their outside world of family and friends under necessary supervision. Part 2 of rule 58 only provides some basic rules in the event that the particular state or country is allowing conjugal visits, that the conjugal visit right “shall be applied without discrimination, and women prisoners shall be able to exercise this right on an equal basis with men” (UNODC, 2015: Mandela Rule 58). It further explains that in this situation, proper facilities for the enjoyment of this right and procedures should be put in place to ensure fair and equal access with due regard to safety and dignity.

Malawi laws also do not explicitly provide for prisoners’ conjugal rights. The Malawi Constitution only provides for the right to liberty and enjoyment of family and marriage. Section 18 states that “every person has the right to personal liberty”, while according to Section 22, the family is entitled to protection by society and the state, and that “each member of the family shall enjoy full and equal respect and shall be protected by law against all forms of neglect, cruelty or exploitation.” Section 42 of the same Constitution also provides a list of rights for incarcerated people. One of those rights is inscribed in Section 42(1)(d) of the Constitution which states that every person who is incarcerated whether convicted or on remand, shall have the right “to be given the means and opportunity to communicate with, and to be visited by, his or her spouse, partner, next-of-kin, relative...”. Reading together sections 18, 22 and 42 might imply the relevance of the provision of conjugal visits.

On the part of the case law, as opposed to other jurisdictions, it appears that no person has ever knocked on court’s doors for intervention on issues of prisoners’ conjugal rights in Malawi hence it is silent. However, in the famous constitutional case of *Masangano v The Attorney-General and others* in 2007, among other things, the court directed the Malawi Prison Service to improve the conditions of prisoners in its facilities in terms of structures, food and other materials within 18 months effective 2007. However, little has been done since the judgement. Prison reforms have not been the priorities of many policymakers evidenced by the prolonged delay of the review and finalisation of the new prisons bill to replace the old 1956 Act which is apparently out of date (The prisons act review started in 2002). Further to that, there has been little improvement in guaranteeing basic human rights in prisons as evidenced by continued overcrowding and lack of nutritious food in Malawi prisons. The construction of new modern prison in Mzimba and additional cell blocks in many prison stations and the introduction of few rehabilitative programmes are still far from satisfactory since the service still does not have a realistic comprehensive plan for rehabilitation and eventually reintegration of offenders upon their release. Consequently, in the words of Singhand and Dasgupta (2015), “many of them [prisoners] step out of a dark hole to fall into a darker ditch” as a result of the failure of the service to provide proper community reintegration activities of which extended family visits could be one of them.

On the issue of the possible inclusion of prisoners’ conjugal rights in the laws of Malawi, the special law commission was established in 2014 to review the prisons act (Kitta, 2015). Amongst the burning issues in the consultative meetings for this law review was the possibility of including prisoners’ conjugal rights in the revised prisons legislation (Nzangaya, 2016; Magombo, 2016; Phiri, 2016). Some stakeholders embraced

the idea since, according to them, had the potential of assisting in the rehabilitation and community reintegration of prison inmates (Phiri, 2016). Further to that, conjugal visits were capable of reducing homosexuality practices and HIV and AIDS prevalence in prisons (Nzangaya, 2016). Another group of stakeholders seriously opposed the inclusion of conjugal rights in the prison's legislations. According to them, Malawi prisons were not ready for such programmes because they did not have proper facilities for conjugal visits (Magombo, 2016). By 2020, there was total silence regarding the legal direction the issue was taking since the said law review was moving at the snail's pace. Nonetheless, these debates just show the sensitivity of the issue hence needs thorough investigation and digest before making decisions. Rehabilitation is prisoner-centred hence the prisoner is always on the winning side. Rehabilitation is also not cheap. If a country is planning to roll out such programme, it would need proper planning and a well calculated and cautious implementation in terms of putting proper resources together to address the potential public morality and system inefficiency concerns for its success.

5 Conclusion

Although there is a fierce debate on whether to allow prisoners enjoy conjugal visits or not in many African countries including Malawi, after everything is said and done, prisoners remain human beings with the same needs as average citizens who just need to be rehabilitated to return to the societies. Sex is a physiological need that strengthens the bond between couples. It cannot hurt anybody if legally married prisoners and their spouses are provided with a right to enjoy conjugal visits. Even in the Mississippian case, the major reason for discontinuing conjugal visits was not economically-based as cited by many authorities. It was the change of prison philosophies from rehabilitation which embrace these kinds of programmes to punishment. This just implies that those countries which claim to have embraced rehabilitation need to seriously consider conjugal visits as a social support programme activity. Besides, times have changed. The human rights-based approach to prison management necessitates the change of the societal attitude towards prisoners. If properly provided, research reveals that conjugal visits are capable of serving as an incentive for good conduct in prison, since inmates strive to avoid any misconduct which might disqualify them from having a conjugal visit. In fact, the prisoner is on the winning side if the programme is offered. This is exactly the purpose of rehabilitation. Moreover, even if prisoners have 100% access to conjugal visits, prisons will never be a pleasant place to stay for many. Further to that, very few prisoners are likely to be eligible for this programme since even in those countries where conjugal visits are still allowed, they are subject to a variety of restrictions and requirements which applicants are expected to meet to qualify hence controlling the numbers of beneficiaries. Conjugal visitation can indeed be one of the rehabilitation options in African countries' prisons.

6 Declarations

6.1 Competing Interests

The author declared that no conflict of interest exists in the publication of this work.

6.2 Publisher's Note

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